

Rail Delivery Group

Response to:

ORR's Working Paper 1: Implementing route-level regulation

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Organisation: Rail Delivery Group
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Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust.

Overview

1. This paper outlines key points from industry in response to ORR's Working Paper 1 (WP1) - Implementing route-level regulation – as well as potential opportunities and issues for industry that could arise from introducing new regulation whilst implementing a devolution strategy.
2. The RDG has already provided a full response to the initial PR18 consultation and many of the points made in that are relevant to this response on WP1. Our response to this working paper needs to be read in conjunction with our response to the initial consultation document and also responses on system operation (WP2 and WP3) and the output framework (WP4).
3. There has also been, and will continue to be, extensive industry engagement and discussion with the ORR through the industry working groups that the RDG has set up for PR18. To date there have been a total of 8 RDG 'route-based regulation meetings – each of which has been attended by the ORR. The RDG values this engagement and we understand the ORR has also found it helpful.
4. The RDG industry groups, such as POG and CRRWG, are a useful means for engagement between Network Rail and train operator owning groups to help set out industry views on the PR18 framework in the longer term including, for example, how scorecards fit into route-level regulation. We envisage that the PR18 working groups will continue to operate throughout the rest of the PR18 process as we believe they provide useful forums to work through the detailed issues. We welcome the tone and purpose of the ORR working papers which are intended to facilitate a more dynamic process of industry engagement to support an iterative approach to developing policy.
5. We confirm that we are content for this response to be published on the ORR website.

Overall framework

6. We support the overall aim of route-level regulation building on Network Rail's devolution strategy, as this helps develop better engagement between Network Rail, TOCs and FOCs, and better engagement with passenger and freight customers.
7. We support the principle of separate route settlements where this supports Network Rail's devolution proposals and provide information to allow benchmarking, however we have some concerns about where the regulatory process might lead. For example, we would not support separate regulatory settlements that lead to separate route-based charging regimes.
8. Regulation at route level will require flexibility to allow Network Rail to revise budgets compared to ORR's expenditure assumptions in order that the overall network system is operated efficiently and effectively – for example through the ability to change budgets through a transparent reporting of change rather than a complex change control process.

9. The regulatory and contractual framework in the rail industry is already fairly complex and not widely understood and we believe there is a danger that PR18 increases this complexity. Thus, wherever possible we urge the ORR to keep PR18 simple, both in terms of carrying out the review and also in the determination itself. This echoes the recommendations from the RDG Review of Charges work¹.

Customer engagement

10. It is critical that the regulatory process supports and facilitates constructive engagement between TOCs/FOCs and Network Rail Routes by creating the right framework and incentives. Governance surrounding the relationship between Network Rail and operators at the route level needs to be at the heart of the process. In addition, it is imperative that input from passengers and freight end users, via representative groups, is built into the process in terms of engagement and measuring satisfaction.
11. Although the key customer interface should be at each Network Rail Route (including the virtual route for freight and national passenger operators), effective co-ordination of network-wide activities will also require close engagement with the Network Rail System Operator (NRSO).
12. Establishing effective governance arrangements between the Network Rail Route, NRSO and TOCs/FOCs will be key to making industry engagement work in practice. Governance arrangements will need to provide clarity on how a Network Rail Route, the virtual route (on behalf of freight and national passenger operators), the NRSO, the NR Technical Authority department, TOCs, FOCs and end users work together when, for example, preparing Route Strategic Business Plans (RSBPs) and discussing performance or delivery issues. The governance arrangements should also be clear on how disagreements between the different groups, and between Network Rail Routes, are resolved including any role for the transparent use of the regulatory escalator. The first step in developing appropriate governance arrangements is for Network Rail to set out its proposals. Train operators are keen to be fully consulted on the proposals and involved as the proposals are developed.
13. These engagement processes should also cover the related issue of monitoring outputs and delivery, and hence the roles of ORR and DfT, compared to the industry governance described above, will also need to be clear.
14. We believe that further consideration should be given to how enhancements are developed and agreed, with particular emphasis on cross-route schemes and those that involve renewal opportunities, and how the virtual route will engage effectively with customers, Network Rail Routes and the NRSO. The governance processes must include arrangements for enhancements and other cross-route matters.
15. In general, we expect most reporting to be at a Network Rail Route level, but further consideration is needed in relation to what is reported by TOC and FOC and for the

¹ The outputs from RDG's Review of Charges are available at: <http://www.raildeliverygroup.com/what-we-do/industry-reform/contractual-regulatory-reform/review-of-charges.html>

virtual route as opposed to the geographic Network Rail Route. Transparent reporting, and the reputational incentives that this facilitates, is supported. As most train operators run services that cross route boundaries, TOCs and FOCs are keen to better understand how route outputs will translate into end-to-end journey outputs. The industry supports the principle of route-based scorecards and are keen to engage with Network Rail Routes in developing these for CP6.

Prioritisation

16. We think PR18 should focus on specific areas and build on, not re-open, the work done at PR13 and through the RDG Review of Charges. We suggest that ORR rigorously prioritises its work programme and focuses its efforts only on the most important issues.
17. A route-level review will place a significant burden on the resources of train operators and Network Rail Routes. If PR18 is not tightly focused the industry will not be able to engage properly in the process.
18. Implementing route-level regulation introduces a new way of working for the industry that requires significant change. In part, this is an acknowledgement that, as Network Rail's organisation evolves, so regulation should also evolve. With such a large change comes a variety of risks around consistency and clarity of approach. We therefore believe that the introduction of route based regulation should be staged and that new ways of working should be embedded and understood before introducing further changes. A staged approach can allow for adaptations to manage any opportunities or issues that arise once the approach goes 'live'. A staged approach will also require ORR and industry to prioritise changes required in PR18 whilst also identifying changes that can be introduced in subsequent reviews.

Process

19. We agree that ORR guidelines for the Route Strategic Business Plans (RSBPs), which will include route asset management plans, should build on Network Rail's own plans for devolution rather than being imposed separately and we support the need for these plans to take account of customer requirements. We also agree that route-based scorecards should form a key component for setting outputs and funding at a Route level; the work done to date is a useful start but some train operators want there to be greater engagement with more consistent approaches.
20. As noted above, this review will require considerable industry engagement and analysis to get it right and we are concerned that some timescales look very tight. For example, we suggest that more time is allowed to prepare the RSBPs after the guidelines have been finalised following the HLOS publication.
21. Both the ORR and DfT are issuing consultations in December on charges and incentives for CP6. Both will have a significant impact on the review and so early conclusions by both organisations are needed to allow work to be prioritised appropriately.

22. We would like to see output targets aligned across the industry. By that we mean that targets set for Network Rail at PR18 are consistent with franchise targets set for train operators.
23. Currently, Network Rail can only challenge the whole of, rather than parts of ORR's final determination by taking it to the Competition and Markets Authority. In a route-level regulatory framework, we think it is important that Network Rail, perhaps with input from TOCs/FOCs, have some way of challenging parts of the determination and would welcome further discussion on this.